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BEFORE THE DIVISION OF SECURITIES  
OF THE DEPARTMENT OF COMMERCE OF THE STATE OF UTAH

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**IN THE MATTER OF:**

**PEAK FUNDING, INC., and  
LELAND WHEELER,**

**Respondents.**

**NOTICE OF ENTRY OF  
DEFAULT AND ORDER**

**Docket No. SD-06-0029**

**Docket No. SD-06-0030**

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**I. BACKGROUND**

A formal adjudicative proceeding was initiated by the Division's Order to Show Cause (OSC) and Notice of Agency Action (Notice) dated May 19, 2006, against Peak Funding, Inc. and Leland Wheeler (Respondents). The Division has moved for entry of a default judgment against Peak Funding, Inc. and Leland Wheeler.

**II. FINDINGS OF FACT**

1. On May 19, 2006, the Division mailed, by certified mail, an Order to Show Cause (OSC) to Peak Funding, Inc. and Leland Wheeler, along with a Notice of Agency Action (Notice), advising that a default order would be entered if they failed to file a written response to the OSC within thirty (30) days of the mailing date of the Notice.

2. On May 26, 2006, the Division received notice from the United States Postal Service (USPS) that the OSC and Notice were delivered to Leland Wheeler's address in Lindley, New York, and accepted by Ryan Wheeler.
3. On May 30, 2006, the Division received notice from the USPS that the OSC and Notice were not delivered to Peak Funding, Inc. because the addressee was unknown.
4. After determining that the wrong Leland Wheeler received the OSC and Notice, on June 5, 2005, the Division mailed a copy of the OSC and Notice to Leland Wheeler in New York, New York.
5. On June 12, 2006, the Division received notice from USPS that the OSC and Notice were not delivered to the Leland Wheeler in New York, New York, because the addressee was unknown.
6. On June 22, 2006, the presiding officer, Wayne Klein, agreed to allow the Division additional time to locate Peak Funding, Inc.'s mailing address. The Division, however, discovered that the OSC and Notice had been mailed to Peak Funding, Inc.'s one and only known address.
7. Peak Funding, Inc. and Leland Wheeler failed to file a response by the imposed deadline.
8. Peak Funding, Inc. (Peak Funding) is a New York corporation in good standing. Peak Funding was registered in the state of New York on May 13, 1999. Peak Funding's business address was 100 Quentin Roosevelt Blvd., Garden City, New York.
9. Leland Wheeler (Wheeler), upon information and belief, resides in New York County, New York. At all times relevant to the matter stated herein, Wheeler was a sales representative for Peak Funding.

10. From October 7 to November 4, 2005, Peak Funding and Wheeler defrauded a Utah investor (Investor) out of \$14,781.03 by soliciting an investment in a “Secured Business Loan” which promised a loan of up to \$300,000 for an up-front fee.
11. The investment scheme began on September 28, 2005, when Investor received a cold call from Wheeler, who offered Investor the opportunity to obtain a loan through his company, Peak Funding.
12. Wheeler told Investor he was a sales representative for Peak Funding, and that Investor was approved to receive a loan of \$200,000 from an unnamed lender. Wheeler told Investor he could not disclose the identity of the lender due to privacy concerns.
13. Wheeler told Investor he needed to complete some documents, fax them back to Wheeler, and send an “Insurance Deposit” in the amount of \$3,764.61 to a “courier” in Michigan. Wheeler said that in return for paying the “Insurance Deposit,” Investor would receive a loan of \$200,000 deposited directly into his bank account. Wheeler told Investor the “Insurance Deposit” would be held in a secure account and earn interest while the loan was processed.
14. On or about September 29, 2005, Investor received a “Loan Agreement” and “Peak Funding Loan Disclosure Information” (the Loan Agreements), by fax from Peak Funding. The Loan Agreements stated that, in return for paying an “Insurance Deposit” or “Insurance Premium”, the Investor would receive a loan in the amount of \$200,000, at a rate of 4% fixed yearly interest, for a term of 30 years. The Loan Agreements

- identified Wheeler as a representative of Peak Funding, and bore the signature of a “Richard Blair”, who was supposedly Peak Funding’s senior vice president.
15. Prior to investing the up-front fee for the loan, Investor provided Wheeler with his account number at America First Credit Union, and also sent, by fax, a copy of his social security card, driver’s license, and a paycheck stub.
  16. On October 7, 2005, Investor sent an “Insurance Deposit” of \$3,764.61, by Western Union, to a courier in Troy, Michigan.
  17. The following day, Wheeler telephoned Investor and told him the lender, still unidentified, felt uncomfortable sending Investor the loan funds, and that an additional “Insurance Deposit” of \$4,759.44 was required. Wheeler told Investor the additional deposit would have the effect of raising the loan amount from \$200,000 to \$250,000.
  18. On October 12, 2005, Investor sent a second “Insurance Deposit” of \$4,759.44, by Western Union, to a courier in Troy, Michigan.
  19. Once Investor verified that his second deposit had been received by the courier, he telephoned Wheeler to check on the status of his loan. Investor tried to contact Wheeler and Peak Funding for four days following the payment of the second “Insurance Deposit” with no success.
  20. On October 18, 2006, five days after wiring the second deposit, Investor closed his account with his credit union, notified the credit bureaus, put a fraud alert on his credit

reports. Investor also informed the driver's license division and social security administration of the situation.

21. On October 19, 2005, Investor telephoned Wheeler. Wheeler told Investor he had been on vacation and was unable to return Investor's telephone calls. Wheeler told Investor his loan proceeds had not been wired because Investor closed his account at the credit union. Wheeler said the lender was charged \$3,390 by Investor's credit union for attempting to deposit the loan funds into the closed account.
22. Wheeler told Investor that, if he paid \$4,183.99 to the lender to cover costs, which included the \$3,390 supposedly incurred for attempting to deposit the money into Investor's account, Investor would receive an upgraded loan of \$300,000, and the funds would be sent by Federal Express to Investor's home.
23. On October 26, 2005, Investor sent \$4,183.99, by Western Union, to a courier in Troy, Michigan.
24. Within a few days of sending money to cover the lender's costs, Investor telephoned Wheeler. Wheeler told Investor the lender was still not comfortable with the situation, and that he knew of an unnamed Canadian lender who would complete the loan with an additional "Insurance Deposit" of \$2,072.99, including Western Union fees. Wheeler told Investor this was a "big time lender" who would have no concerns about sending the loan funds to Investor.

25. On November 4, 2005, Investor sent the third deposit of \$2,072.99, by Western Union, to a courier in Canada.
26. Soon thereafter, Investor spoke with Wheeler on the telephone to check on the status of the loan. Wheeler told Investor the third deposit did not make it to the Canadian lender because the lender was filing bankruptcy. Wheeler said Investor's deposits had been placed in a common account, and if Investor wired an additional "Insurance Deposit" into the same account, he would receive a government grant in addition to the loan, and the grant would not have to be paid back.
27. Investor told Wheeler he had no more money and wanted all of his money returned.
28. Wheeler agreed to return Investor's money, but said it would take 30 business days.
29. Despite many demands, Investor has not received his insurance deposits or loan proceeds from Wheeler or Peak Funding.

#### Misrepresentations and Omissions

30. In connection with the offer and sale of a security, Peak Funding and Wheeler, directly and indirectly, made a false statement to Investor when they told him the lender was charged \$3,390, by Investor's credit union, for attempting to deposit money into Investor's closed account. In fact, no lending institution charges a fee for attempting to deposit money into a closed account.

31. In connection with the offer and sale of a security to Investor, Peak Funding and Wheeler, directly and indirectly, failed to disclose material information, including, but not limited to, the following:
- a. That in December 1996, in the state of New York, Wheeler petitioned for bankruptcy under Chapter 7, and received a discharge in April 1997;
  - b. Some or all of the information typically provided in an offering statement or prospectus regarding Peak Funding and the unnamed lenders, such as:
    - i. The identities of the lenders;
    - ii. The business and operating history for the lenders and for Peak Funding;
    - iii. The success rate of getting loans for other investors;
    - iv. Where the “Insurance Deposits” were held and under what conditions;
    - v. Identities of the principals for Peak Funding and the lenders, along with their experience in this type of business;
    - vi. Agent commissions or compensation for selling the investment;
    - vii. Financial statements for the companies;
    - viii. The market for the product of the companies;
    - ix. The nature of the competition for the product;
    - x. Current capitalization of the issuer of the securities;
    - xi. A description of how the investment would be used by the business;
    - xii. Risk factors for investors;

- xiii. The number of other investors;
- xiv. The minimum capitalization needed to participate in the investment;
- xv. The disposition of any investments received if the minimum capitalization were not achieved;
- xvi. The liquidity of the investment;
- xvii. Discussion of pertinent suitability factors for the investment;
- xviii. The proposed use of the investment proceeds;
- xix. Any conflicts of interest the issuer, the principals, or the agent may have with regard to the investment;
- xx. Whether the investment is a registered security or exempt from registration; and
- xxi. Whether the person selling the investment was licensed.

### **III. CONCLUSIONS OF LAW**

- 32. The attempted service of the OSC and the Notice initiating these proceedings is valid upon Peak Funding, Inc. and Leland Wheeler.
- 33. Because Peak Funding, Inc. and Leland Wheeler did not file an answer or written response they are in default.
- 34. The investment opportunity offered and sold by Peak Funding, Inc. and Leland Wheeler is a security under the Utah Uniform Securities Act (the Act).



35. In connection with the offer and sale of a security, Peak Funding, Inc. and Leland Wheeler made untrue statements of material fact to Investor.
36. By this conduct, Peak Funding, Inc. and Leland Wheeler violated § 61-1-1(2) of the Act.
37. In connection with the offer and sale of a security, Peak Funding, Inc. and Leland Wheeler omitted to state to Investor various material facts which were necessary to make the statements made not misleading.
38. By this conduct, Peak Funding, Inc. and Leland Wheeler violated § 61-1-1(2) of the Act.

#### **IV. ORDER**

Based on the above, the Director hereby:

1. Declares Peak Funding, Inc. and Leland Wheeler in default for failing to respond to the OSC and Notice issued May 19, 2006.
2. Enters, as its own findings, the Finding of Fact described in Section II above.
3. Enters, as its own conclusions, the Conclusions of Law describe in Section III above.
4. Finds that Peak Funding, Inc. willfully violated the Utah Uniform Securities Act by:
  - a. Making material misrepresentations in connection with the offer and sale of securities in Utah in violation of § 61-1-1(2); and
  - b. Omitting to disclose material information in connection with the offer and sale of securities in Utah in violation of § 61-1-1(2).
5. Finds that Leland Wheeler willfully violated the Utah Uniform Securities Act by:

- a. Making material misrepresentations in connection with the offer and sale of securities in Utah in violation of § 61-1-1(2); and
  - b. Omitting to disclose material information in connection with the offer and sale of securities in Utah in violation of § 61-1-1(2).
6. Orders Peak Funding, Inc. and Leland Wheeler to permanently CEASE and DESIST from any violations of the Act.
7. Orders Peak Funding, Inc. to pay a fine of twenty thousand dollars (\$20,000) to the Division; and
8. Orders Leland Wheeler to pay a fine of twenty thousand dollars (\$20,000) to the Division.

DATED this 15<sup>th</sup> day of August, 2006.

  
WAYNE KLEIN  
Director, Division of Securities



Pursuant to § 63-46b-11(3), Respondent may seek to set aside the Default Order entered in this proceeding by filing such a request with the Division consistent with the procedures outlined in the Utah Rules of Civil Procedure.